IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 495 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE D.A.MEHTA Sd/-

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

GENERAL SECRETARY

Versus

ADMINISTRATIVE OFFICER

Appearance:

MR SV BACHANI for Petitioner No. 1
MR RAJESH DESAI FOR MR PRASHANT G DESAI
for Respondents No. 1-2
MR HL JANI, AGP. for Respondent No. 3
NOTICE SERVED for Respondent No. 4

CORAM : MR.JUSTICE D.A.MEHTA

Date of decision: 06/03/2002

ORAL JUDGEMENT

1 This petition has been filed by the Surat Mahanagarpalika Prathmik Shikshak Parishad, through its General Secretary seeking direction to the effect that the respondent No.1 should give cash medical allowance to primary teachers of Municipal School Board. The

petitioner is a recognised Parishad vide recognition letter No.3 dated 3/4/1984 issued by Surat Municipal School Board.

2 The main stay of the petition is Government Resolution No.NSHM/1085/58526/4230/CH dated 11/12/1986 issued by the Education Department of the Government of Gujarat whereunder it is stated that whatever benefits are given to the employees of the State Government vide any Government Resolution, Circulars or orders from time to time shall also be given to Primary Teachers working in Municipal School Board in the State of Gujarat. The said resolution is at Annexure "A" to the petition.

3 Respondent No.1 who is an Administrative Officer of the Municipal School Board has filed affidavit-in-reply on 18/3/1991 and principally relied upon Government Resolution dated 11/09/1981. According to respondent No.1 as per the aforesaid Government Resolution dated 11/09/1981 the Surat Municipal Corporation has been kept out of various municipalities to whom the Government has directed that Primary Teachers working under those 27 specified municipalities would be entitled to Medical Allowance in cash in relation to medical expenses incurred by such Primary Teachers.

4 There is no appearance on behalf of the petitioner. However, on behalf of respondent Nos. 1 and 2 Mr.Rajesh Desai appears on behalf of Mr.Prashant G.Desai. Mr.H.L.Jani, learned Assistant Government Pleader appears on behalf of respondent No.3. In the reply affidavit filed on behalf of respondent No.1 in paragraph 9 in relation to Government Resolution dated 11/12/1986 it is stated thus :

> "9. With reference to the contents of para 3 of the petition, I say that it is true that the Education Department of State of Gujarat has issued a Resolution No. NSHM/1085/58326/4230/CH dated 11.12.1986. However, as and when Surat Municipal Corporation adopts the said Resolution, in that case only it can be applicable to the employees of the Municipal School Board of Surat".

4. As against this, the petitioner in its Rejoinder Affidavit has countered this submission in the following

terms :

" xxx xxx Therefore there is no question of adopting any resolution passed by the Municipal Corporation. However, it is respectfully submitted that the said G.R. is already adopted by the Surat Municipal Corporation and Respondent No.1 has already been empowered to adopt said Govt. Resolution at Annexure 'C' to this petition even then respondent No.1 has not adopted the said G.R. and has not paid cash medical allowance to primary teachers working under his control. Further it is respectfully submitted that Govt. has already given grant for medical allowance to be paid to primary teachers working in M.S.B. Surat even then respondents are not paying medical allowances to primary teachers."

5. Thus, it is apparent that respondent No.1 was not implementing or following the Government Resolution of 11/12/1986 as according to it the said Government Resolution had not been adopted by the Surat Municipal Corporation viz. respondent No.2. However, in light of what is stated in the affidavit-in-rejoinder, once the Surat Municipal Corporation has adopted Government Resolution of 11/12/1986 there is no case or occasion or reason for respondent No.1 not to follow and implement the said Government Resolution dated 11/12/1986.

6. During the course of his submission Mr.Rajesh Desai appearing on behalf of respondent Nos. 1 and 2 has placed great reliance on Government Resolution dated 11/09/1981 and read extensively from the reply affidavit of respondent No.1 in support of the stand taken by the Municipal School Board. However, in view of the fact that the Government Resolution of 11/12/1986 is later in point of time and there is no conflict between two resolutions the same requires to be followed and as already stated, the limited ground for not implementing and following said resolution of 11/12/1986 has already disappeared once respondent No.2 Corporation had adopted the said Government Resolution.

7. In view of these facts and circumstances, this petition is allowed and respondent No.1 is directed to grant cash medical allowance to all those primary

teachers working under it who are not being given such cash medical allowance. As a consequence the minutes/order dated 14/5/1990 at Annexure "G" as are relatable to the controversy at hand viz. payment of medical allowance are quashed and set aside. However, it is made clear that in case of employees who had already opted to avail of the benefits in kind by way of availing of treatment and medicines shall not be entitled to make any such claim of cash medical allowance in relation to the services already availed of.

8. In the result the petition is allowed. Rule made absolute. There shall be no order as to costs.

Sd/-
(D.A.Mehta, J)

m.m.bhatt